

ASSEMBLY BILL

No. 1906

Introduced by Assembly Member Melendez

February 11, 2016

An act to amend Section 6601 of the Welfare and Institutions Code, relating to mental health.

LEGISLATIVE COUNSEL'S DIGEST

AB 1906, as introduced, Melendez. Mental health: sexually violent predators.

Existing law requires the Secretary of the Department of Corrections and Rehabilitation to refer a person who is in custody under that department's jurisdiction, who is serving a determinate sentence or whose parole has been revoked, for evaluation by the State Department of State Hospitals if the secretary determines that the person may be a sexually violent predator. Existing law establishes a screening process for the department and the Board of Parole Hearings to determine whether a person has committed a sexually violent offense, and to determine if the person is likely to be a sexually violent predator prior to referral to the State Department of State Hospitals for a full evaluation. Existing law also requires, if the State Department of State Hospitals determines that a person is a sexually violent predator, as defined, the Director of State Hospitals to forward a request to a specified county for a petition to be filed for the person to be committed to a facility for mental health treatment.

This bill would require the Director of State Hospitals to forward the request no less than 20 calendar days prior to the scheduled release date of the person.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6601 of the Welfare and Institutions Code
2 is amended to read:
3 6601. (a) (1) Whenever the Secretary of the Department of
4 Corrections and Rehabilitation determines that an individual who
5 is in custody under the jurisdiction of the Department of
6 Corrections and Rehabilitation, and who is either serving a
7 determinate prison sentence or whose parole has been revoked,
8 may be a sexually violent predator, the secretary shall, at least six
9 months prior to that individual's scheduled date for release from
10 prison, refer the person for evaluation in accordance with this
11 section. However, if the inmate was received by the department
12 with less than nine months of his or her sentence to serve, or if the
13 inmate's release date is modified by judicial or administrative
14 action, the secretary may refer the person for evaluation in
15 accordance with this section at a date that is less than six months
16 prior to the inmate's scheduled release date.
17 (2) A petition may be filed under this section if the individual
18 was in custody pursuant to his or her determinate prison term,
19 parole revocation term, or a hold placed pursuant to Section 6601.3,
20 at the time the petition is filed. A petition shall not be dismissed
21 on the basis of a later judicial or administrative determination that
22 the individual's custody was unlawful, if the unlawful custody was
23 the result of a good faith mistake of fact or law. This paragraph
24 shall apply to any petition filed on or after January 1, 1996.
25 (b) The person shall be screened by the Department of
26 Corrections and Rehabilitation and the Board of Parole Hearings
27 based on whether the person has committed a sexually violent
28 predatory offense and on a review of the person's social, criminal,
29 and institutional history. This screening shall be conducted in
30 accordance with a structured screening instrument developed and
31 updated by the State Department of State Hospitals in consultation
32 with the Department of Corrections and Rehabilitation. If as a
33 result of this screening it is determined that the person is likely to
34 be a sexually violent predator, the Department of Corrections and
35 Rehabilitation shall refer the person to the State Department of

1 State Hospitals for a full evaluation of whether the person meets
2 the criteria in Section 6600.

3 (c) The State Department of State Hospitals shall evaluate the
4 person in accordance with a standardized assessment protocol,
5 developed and updated by the State Department of State Hospitals,
6 to determine whether the person is a sexually violent predator as
7 defined in this article. The standardized assessment protocol shall
8 require assessment of diagnosable mental disorders, as well as
9 various factors known to be associated with the risk of reoffense
10 among sex offenders. Risk factors to be considered shall include
11 criminal and psychosexual history, type, degree, and duration of
12 sexual deviance, and severity of mental disorder.

13 (d) Pursuant to subdivision (c), the person shall be evaluated
14 by two practicing psychiatrists or psychologists, or one practicing
15 psychiatrist and one practicing psychologist, designated by the
16 Director of State Hospitals. If both evaluators concur that the
17 person has a diagnosed mental disorder so that he or she is likely
18 to engage in acts of sexual violence without appropriate treatment
19 and custody, the Director of State Hospitals shall forward a request
20 for a petition for commitment under Section 6602 to the county
21 designated in subdivision (i). Copies of the evaluation reports and
22 any other supporting documents shall be made available to the
23 attorney designated by the county pursuant to subdivision (i) who
24 may file a petition for commitment.

25 (e) If one of the professionals performing the evaluation pursuant
26 to subdivision (d) does not concur that the person meets the criteria
27 specified in subdivision (d), but the other professional concludes
28 that the person meets those criteria, the Director of State Hospitals
29 shall arrange for further examination of the person by two
30 independent professionals selected in accordance with subdivision
31 (g).

32 (f) If an examination by independent professionals pursuant to
33 subdivision (e) is conducted, a petition to request commitment
34 under this article shall only be filed if both independent
35 professionals who evaluate the person pursuant to subdivision (e)
36 concur that the person meets the criteria for commitment specified
37 in subdivision (d). The professionals selected to evaluate the person
38 pursuant to subdivision (g) shall inform the person that the purpose
39 of their examination is not treatment but to determine if the person
40 meets certain criteria to be involuntarily committed pursuant to

1 this article. It is not required that the person appreciate or
2 understand that information.

3 (g) Any independent professional who is designated by the
4 Secretary of the Department of Corrections and Rehabilitation or
5 the Director of State Hospitals for purposes of this section shall
6 not be a state government employee, shall have at least five years
7 of experience in the diagnosis and treatment of mental disorders,
8 and shall include psychiatrists and licensed psychologists who
9 have a doctoral degree in psychology. The requirements set forth
10 in this section also shall apply to any professionals appointed by
11 the court to evaluate the person for purposes of any other
12 proceedings under this article.

13 (h) If the State Department of State Hospitals determines that
14 the person is a sexually violent predator as defined in this article,
15 the Director of State Hospitals shall forward a request for a petition
16 to be filed for commitment under this article to the county
17 designated in subdivision ~~(i)~~: *(i) no less than 20 calendar days*
18 *prior to the scheduled release date of the person.* Copies of the
19 evaluation reports and any other supporting documents shall be
20 made available to the attorney designated by the county pursuant
21 to subdivision (i) who may file a petition for commitment in the
22 superior court. *The person has no right to enforce the time limit*
23 *set forth in this subdivision and has no remedy for its violation.*

24 (i) If the county's designated counsel concurs with the
25 recommendation, a petition for commitment shall be filed in the
26 superior court of the county in which the person was convicted of
27 the offense for which he or she was committed to the jurisdiction
28 of the Department of Corrections and Rehabilitation. The petition
29 shall be filed, and the proceedings shall be handled, by either the
30 district attorney or the county counsel of that county. The county
31 board of supervisors shall designate either the district attorney or
32 the county counsel to assume responsibility for proceedings under
33 this article.

34 (j) The time limits set forth in this section shall not apply during
35 the first year that this article is operative.

36 (k) An order issued by a judge pursuant to Section 6601.5,
37 finding that the petition, on its face, supports a finding of probable
38 cause to believe that the individual named in the petition is likely
39 to engage in sexually violent predatory criminal behavior upon his
40 or her release, shall toll that person's parole pursuant to paragraph

1 (4) of subdivision (a) of Section 3000 of the Penal Code, if that
2 individual is determined to be a sexually violent predator.

3 (l) Pursuant to subdivision (d), the attorney designated by the
4 county pursuant to subdivision (i) shall notify the State Department
5 of State Hospitals of its decision regarding the filing of a petition
6 for commitment within 15 days of making that decision.

7 ~~(m) This section shall become operative on the date that the~~
8 ~~director executes a declaration, which shall be provided to the~~
9 ~~fiscal and policy committees of the Legislature, including the~~
10 ~~Chairperson of the Joint Legislative Budget Committee, and the~~
11 ~~Department of Finance, specifying that sufficient qualified state~~
12 ~~employees have been hired to conduct the evaluations required~~
13 ~~pursuant to subdivision (d), or January 1, 2013, whichever occurs~~
14 ~~first.~~